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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 176

JENKINS BROS.,

Petitioner,

v.

LOCAL 5623, UNITED STEELWORKERS OF AMERICA, ET AL.,

Respondents.

PETITIONER'S REPLY BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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—and—

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Of Counsel

IN THE

Supreme Court of the United States

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JENKINS BROS.,
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vs.
LOCAL 5623, UNITED STEELWORKERS OF AMERICA, ET AL.,
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PETITIONER'S REPLY BRIEF UNDER RULE 24(4)

Respondent's Brief in Opposition requires brief reply

I.

In the first place, respondent has gone outside the record in filing, as an appendix to its brief, a purported record of certain alleged proceedings before the Connecticut State Board of Mediation and Arbitration.

The record of those alleged proceedings is not certified.

While petitioner concedes that there was a hearing noticed, for June 30, 1965, petitioner's counsel contended that the matter was *sub judice* and therefore declined to participate in whatever proceedings the Board purported to conduct.

The matter *is sub judice,* in this Court, and petitioner contends that pending the final judicial determination of this cause, the Board lacked competence to proceed *ex parte,* as respondent reports that it did.

Meanwhile, therefore, the case below is not moot, as claimed.

II

By the same token, the purported arbitration award of the Board (set forth in the appendix to respondent's brief) and the findings and conclusions recited therein, are not binding on petitioner and are not properly before this Court.

But even if they were, they show that, at the very least, Mr. Saladak, the discharged employee, "had carried slips into the plant representing 'play' taken at other times . . ." (Respondent's Brief, p. 3).

Of course, this alone is a violation of Connecticut General Statutes (Rev. 1961) § 53-298 (set forth at pp. 4-5 of the Petition) and specifically of the provision, "Any person . . . who . . . keeps, or is the custodian of, any slips . . . used for any such [policy playing] purposes . . . shall be fined . . . or imprisoned . . .".

Whatever he testified before the Board, without fear of cross-examination, the compelling fact is that Saladak had earlier pleaded guilty to the charge in the Connecticut Circuit Court.

Thus, the case is squarely within the judicially-declared public policy of Connecticut (*Avco Corporation* v. *Preteska*, 22 Conn. Supp. 475, 174 A2d 684, Super. Ct., 1961) that any arbitration award directing reinstatement of an employee guilty of violating the gambling laws on the employer's premises (as, here, Saladak violated the gambling laws by admittedly having custody of policy slips in petitioner's plant) is *void*.

III

The one case on which respondent relies, *Local 453* v. *Otis Elevator Co.*, 314 F. 2d 25 (2d Cir. 1963), cert. den. 373 U. S. 949, is not apposite: That case involved a *New York* situation, where the employee had *not* pleaded guilty,

not a *Connecticut* gambling violation where the employee *did* plead guilty; and in New York there was no state court decision (like *Avco* v. *Preteska,* supra, in Connecticut) specifically declaring void as against public policy an arbitration award ordering reinstatement under the instant circumstances.

CONCLUSION

Under the judicially-declared public policy of Connecticut, where, as here, an employee violates the State gambling statutes in the employer's plant, any arbitration award ordering his reinstatement is *void.*

No matter what the public policy of New York is, any award in Connecticut in the premises in Saladak's favor would be void.

The company was entitled to a trial of its action seeking from the district court an injunction against this arbitration.

This Court should grant certiorari to review the judgments below in this important issue of federal labor law where, admittedly (Respondent's Brief, p. 5)

> "[t]here is only one reported decision in which the 'Question' has been considered . . .".

Dated: August 16, 1965.

Respectfully submitted,

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